

AMENDMENTS TO THE DRAWINGS:

Please find accompanying this response replacement sheets for Fig. 1 wherein amendments explained in the Remarks presented below are effected.

REMARKS

The above amendments and following remarks are responsive to the Office Action of December 15, 2004. Reconsideration of the application and a notice of allowance are earnestly solicited.

Claims 33-55 are pending in the application and Applicant expresses appreciation to the Examiner for withdrawing the restriction requirement and considering all of the claims on the merits. Applicant expresses further appreciation to the Examiner for determining that 33-34 would be allowed if related objections to the drawings, discussed below, are resolved. Furthermore, Applicant expresses appreciation to the Examiner for determining that claims 46, 51 and 54-55 contain allowable subject matter and would be allowed if rewritten to include the limitations of the claims from which they depend.

The abstract, provided in the substitute specification filed on September 9, 2002, has been objected to for containing more than one paragraph. The abstract in the substitute specification, however, contains only one paragraph as indicated in both the clean version and the marked-up version where the deletion of a paragraph separator is indicated by enclosed brackets. Accordingly, the objection of the Abstract is improper.

The drawings have been objected to because the Examiner asserts that the drawings fail to illustrate first and second cone angles recited in claims 33,

35 and 43. Applicant provides herewith a substitute drawing for Figure 1 in which the different cone angles are more clearly illustrated. Applicant has also amended the specification to correspond to the drawing amendment. Support for the drawing amendment is otherwise found on page 17, first paragraph of the specification.

The drawings have been objected to because the Examiner asserts that the same fails to illustrate the square tip recited in Claim 50. However, Applicant asserts that the Examiner is incorrect because a known example of a square tip is one having four adjacent lateral surfaces that terminate at a singular tip and such is illustrated in the drawings.

Claim 50 has been rejected under 35 U.S.C. §112, first paragraph because the Examiner asserts that the square tip pressed into the first end was not described in the disclosure as filed. The Examiner's assertion is incorrect because the originally filed application discloses at page 14, lines 8-9, that "[p]ressed into the first conical part region, in the screwing-in direction, of the anchoring portion of the basic body, which is designed as a displacement body, is a square tip." Accordingly, the rejection under 35 U.S.C. §112, first paragraph, against Claim 50 is improper and should be removed.

Claims 35-39, 42-45, 47-49 and 52-53 are rejected under 35 U.S.C. §102 (b) as being anticipated by Lesar (U.S. Patent No. 5,524,844), where the

Examiner provides Figure 7 of Lesar within the body of the Office Action as support for the rejection. Claims 40 and 50 have been rejected under 35 U.S.C. §103 (a) as being unpatentable over Lesar. Regarding Claim 40, the Examiner asserts, without support, that one skilled in the art would know to provide an angular difference of between 1 and 3 degrees between a first cone angle and a second cone angle. Regarding Claim 50, the Examiner the Examiner asserts, without support, that one skilled in the art would know to provide a square tip shape. Claim 41 has been rejected under 35 U.S.C. §103 (a) as being unpatentable over Lesar as modified by Gerhard (DE Patent No. 19637985) or Zayeratabat (U.S. Patent No. 6,299,125), where both Gerhard and Zayeratabat are cited for teaching a bore extending through an anchoring portion so that water disposed therein may exit from the bore in the anchoring portion of the basic body.

Regarding the rejections under section 102 (b), independent Claim 35 recites that the first and second portions are conical having different conical angles. Independent Claim 43 recites that the first and second conical portions taper towards the first end of the basic body. A conical surface is defined as “the surface generated by a moving straight line which always passes through a fixed point and intersects a fixed curve.” *Webster's Third New International Dictionary, Merriam-Webster, Incorporated, 2002, at 479.* That is, the exterior

surface of a cone tapers to a point. *Cyber Corp. v. FAS Technologies, Inc.*, 138 F.3d 1448 (Fed. Cir. 1998) (a dictionary may be consulted “at any time to help determine the meaning of claim terms”).

Lesar, on the other hand, illustrates in Figures 4-6 and 8 and discloses in column 3, line 44 et seq., a post 10 that has a main body 12 where the main body 12 has a cylindrical shape. A cylinder is defined as “the surface traced by any straight line moving parallel to a fixed straight line and intersecting a curve” *Webster's Third New International Dictionary, Merriam-Webster, Incorporated, 2002, at 565*. That is, the exterior surface of a cylinder is not conical as the shape does not taper to a point. Moreover, Figures 5 and 6 of Lear, omitted by the Examiner, teach that the bottom segment of the anchor 10 is a shovel 34 that in a side view (perpendicular to the view provided by the Examiner) has edges defined by parallel lines extending from the main body 12, defining a cylindrical surface area and not a conical surface area.

Further to Lesar's figure provided by the Examiner, the stabilizing webs 20 of Lesar are similar to the fin 7 of the present invention in that the webs have a two-dimensional shape that is not imparted to the rest of the cross sectional area defining the cylinder of the Lesar's main body 12. The only segment of Lesar that has a conical form (i.e., a circular base and sides that

slope evenly to a point taper) is the neck 22 which is connected below the storage cup 24.

Accordingly, the two-part conical shape in the lower sections as recited in the pending claims differs from the cylindrical shape or single cone shape taught by Lesar. Lesar therefore fails to anticipate independent Claim 35 and claims 36-42 depending therefrom, or anticipate independent Claim 43 and claims 44, 45, 48-50, 52 and 53 depending therefrom. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) ("a claim is anticipated only if each and every element as set forth in the claim" is found in the cited prior art reference); *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558 (Fed. Cir. 2000) (a claim that depends from a prior claim incorporates all the limitations of that claim).

Regarding the rejection of claims 40 and 50 based on ordinary skill in the art, Applicant asserts that a rejection based on what is within the ordinary skill is only appropriate where such knowledge is of such notorious character that official notice can be taken. *In re Alhert*, 424 F.2d 1088, 1091 (CCPA 1970) (an unsupported rejection based on knowledge in the art is only proper where the underlying facts are so well-known as to be capable of instant and unquestionable demonstration as to defy dispute). When applying rejections against inventions relating to the precise configuration of a fastener, assertions

of technical facts must be supported by some prior art reference. *Id.*, at 1091; *In re Zurko*, 228 F.3d 1379, 1385 (Fed. Cir. 2001) (in fields of technology, the Examiner must provide concrete evidence to support a rejection under section 103). Accordingly, the Examiner should either provide a combination of references that teach each element in claim 40 and 50 or remove the rejection of the claims under 35 U.S.C. §103 (a).

Further to the rejection based on ordinary skill, Lesar teaches away from a conical angels by illustrating and disclosing the stated cylindrical shape rather than the claimed conical shape. Accordingly, Lesar teaches away from the conical shape as recited in Claim 40 so that a rejection of Claim 40 under section 103 (a) is inappropriate. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983) (a “reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention”).

Yet further, Applicant provides the following argument against Lesar. Specifically, not only does Lesar fail to teach two cone-shape portions with different cone angles, Applicant asserts that the only cone-shaped element, which is the neck portion 22, is not part of the anchoring portion of the device, but rather of the holding portion. The tapered neck 22 extends upwardly from a top end of the cylindrical main body 12 (i.e. the anchoring portion) and is

provided directly under a cylindrical storage cup 24. The tapered neck 22 in Lesar is provided as a gradation between the main body 12 and a broader diameter storage cup 24 at the top end of the device.

Applicant asserts that the anchoring portion of Lesar fails to extend up to the tapered neck 20 because, as illustrated in Lesar, the anchoring portion is separated from the neck by a cylindrical intermediate part. In comparison with Lesar, the claimed anchoring portions extend up to the tapered neck.

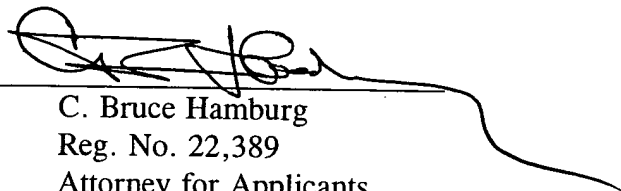
Moreover, Lesar fails to teach the claimed forming of the anchoring portion by hammering the shape from a cylindrical part. Instead, the cross-sectional view of Figure 7 of Lesar illustrates that the device is formed by a molding process because the storage cup as well as the lateral webs 20 are made of one piece with the cylindrical main body 12.

Finally, Applicant asserts that the shovel-like bottom end 34 of Lesar is not hollow. The shovel form does not provide good stability when driving or screwing the device into a surface as is the case in a cone-shaped anchoring portion.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-1250.

Respectfully submitted,
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